CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 23

WILSON AND CO., INC., PETITIONER,

vs.

THE UNITED STATES

No. 24

WILSON & CO., INC., OF KANSAS, PETITIONER,

vs.

THE UNITED STATES

No. 25

T. M. SINCLAIR & COMPANY, LIMITED, PETITIONER

vs.

THE UNITED STATES

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MARCH 1, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 778

WILSON AND CO., INC., PETITIONER,

vs.

THE UNITED STATES

No. 779

WILSON & CO., INC., OF KANSAS, PETITIONER,

vs.

THE UNITED STATES

No. 780

T. M. SINCLAIR & COMPANY, LIMITED, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 44641

WILSON & Co., INC., a Corporation,

vs.

THE UNITED STATES OF AMERICA

I. PETITION—March 31, 1939

To the Court of Claims of the United States and the Honorable Judges Thereof:

The above-named claimant, Wilson & Co., Inc., by this, its petition, respectfully shows:

1. That claimant at all times hereinafter mentioned was and is now a corporation, organized and existing under the laws of the State of Delaware, engaged in the preparation, packing and sale of meat products, including hog products for foreign and domestic commerce, and having an office at 4100 South Ashland Avenue, in the City of Chicago, and State of Illinois.

2. That subsequent to November 5, 1933, and prior to January 6, 1936, claimant exported, in its own name, large quantities of hog products to foreign countries (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam). Processing taxes [fol. 2] under Section 9 (a) of the Act of May 12, 1933, Ch. 25, 48 Stat. 31 (7 U. S. C. A. Sec. 609), known as the Agricultural Adjustment Act, have been paid by claimant upon the processing of the hogs from which the aforesaid hog products were produced. A floor stock tax under Section 16 (a) of the said act has been paid by claimant on that portion of the hog products so exported, which it held on November 5, 1933, the effective date of the processing tax on hogs. Both the said taxes were paid to the Collector of Internal Revenue for the First District of Illinois.

3. That the taxes so paid by claimant are refundable to it, as the exporter or consignor named in the bill of lading under which said hog products were exported, pursuant to

the provisions of Section 17 (a) of the said Agricultural Adjustment Act, as amended, which provides as follows:

"(a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. * * *"

[fol. 3] 4. That upon exportation of said hog products and prior to June 22, 1936, claims for the refund of processing and floor stock taxes previously paid were duly filed by claimant with the Collector of Internal Revenue for the First District of Illinois, pursuant to and in compliance with regulations prescribed by the Commissioner of Internal Revenue. Attached hereto, marked Exhibit "A" and made a part of this petition, is a schedule which correctly shows under properly designated columns: (1) the number given by the Treasury Department to each claim filed by claimant for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog product; (6) the amount of tax paid, refund of which is sought by reason of such taxed hog product having been exported; (7) the month and year in which the product was processed; and (8) the date on which the tax was paid.

5. That each of the claims so filed by claimant (Exhibit "A", column 1) was rejected, in the amount shown in Exhibit "A", column 6, by the Commissioner of Internal Revenue.

6. That no action other than as aforesaid has been had on these claims in Congress or by any of the departments; that no person other than claimant is the owner thereof or interested therein; that no assignment or transfer of said claims [fol. 4] or of any part thereof or interest therein has been made; that claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; that claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government; and that it believes the facts as hereinbefore stated to be true.

Wherefore, claimant prays judgment against the United States of America upon the facts and the law for $144,666.03 together with its reasonable costs and disbursements thereon.

Wilson & Co., Inc., by Edward Foss Wilson, President, Louis R. Simpson, Attorney for Claimant, Post Office Address, 4100 South Ashland Avenue, Chicago, Illinois.

[fols. 5-6] *Duly sworn to by Edward Foss Wilson. Jurat omitted in printing.*

[fols. 7-80] ("Exhibit A", the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for the refund of taxes paid with respect to products exported. Said schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $144,666.03, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid.)

* * * * * * *

[fol. 81] IN COURT OF CLAIMS OF THE UNITED STATES

No. 44642

WILSON & CO., INC., of Kansas, a Corporation,

vs.

THE UNITED STATES OF AMERICA

II. PETITION—March 31, 1939

To the Court of Claims of the United States and the Honorable Judges Thereof:

The above-named claimant, Wilson & Co., Inc., of Kansas, by this its petition, respectfully shows:

1. That claimant at all times hereinafter mentioned was a corporation, organized and existing under the laws of the State of Delaware, engaged in the preparation, packing and sale of meat products, including hog products for foreign and domestic commerce, and having an office at 4100 South Ashland Avenue, in the City of Chicago, and State of Illinois.

2. That subsequent to November 5, 1933, and prior to January 6, 1936, claimant exported, in its own name, large quantities of hog products to foreign countries (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam). Processing taxes under Section 9 (a) of the Act of May 12, 1933, [fol. 82] Ch. 25, 48 Stat. 31 (7 U. S. C. A. Sec. 609), known as the Agricultural Adjustment Act, have been paid by claimant to the Collector of Internal Revenue at Chicago upon the processing of the hogs from which the aforesaid hog products were produced. A floor stock tax under Section 16 (a) of the said act has been paid by claimant to the Collector of Internal Revenue at Wichita, Kansas, on that portion of the hog products so exported, which it held on November 5, 1933, the effective date of the processing tax on hogs.

3. That the taxes so paid by claimant are refundable to it, as the exporter or consignor named in the bill of lading under which said hog products were exported, pursuant to the provisions of Section 17 (a) of the said Agricultural Adjustment Act, as amended, which provides as follows:

"(a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. * * *"

[fol. 83] 4. That upon exportation of said hog products and prior to June 22, 1936, claims for the refund of processing and floor stock taxes previously paid were duly filed by claimant with the Collector of Internal Revenue for the First District of Illinois, pursuant to and in compliance with regulations prescribed by the Commissioner of Internal Revenue. Attached hereto, marked Exhibit "A" and made a part of this petition, is a schedule which correctly shows under properly designated columns: (1) the number given by the Treasury Department to each claim filed by claimant for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog product; (6) the amount of tax paid, refund of which is sought by reason of such taxed hog product having been exported; (7) the month and year in which the product was processed; and (8) the date on which the tax was paid.

5. That each of the claims so filed by claimant (Exhibit "A", column 1) was rejected, in the amount shown in Exhibit "A", column 6, by the Commissioner of Internal Revenue.

6. That no action other than as aforesaid has been had on these claims in Congress or by any of the departments; that no person other than claimant is the owner thereof or interested therein; that no assignment or transfer of said

claims or of any part thereof or interest therein has been [fol. 84] made; that claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; that claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government; and that it believes the facts as hereinbefore stated to be true.

Wherefore, claimant prays judgment against the United States of America upon the facts and the law for $6,641.00 together with its reasonable costs and disbursements thereon.

Wilson & Co., Inc., of Kansas, by Edward Foss Wilson, President; Louis R. Simpson, Attorney for Claimant. Post Office Address: 4100 South Ashland Avenue, Chicago, Illinois.

[fols. 85-86] *Duly sworn to by Edward Foss Wilson. Jurat omitted in printing.*

[fols. 87-88] ("Exhibit A", the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for the refund of taxes paid with respect to products exported. Said schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $6,641.00, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid.)

* * * * * * *

[fol. 89] IN COURT OF CLAIMS OF THE UNITED STATES

No. 44643

T. M. SINCLAIR & COMPANY, LIMITED, a Corporation,

vs.

THE UNITED STATES OF AMERICA

III. PETITION—March 31, 1939

To the Court of Claims of the United States and the Honorable Judges Thereof:

The above-named claimant, T. M. Sinclair & Company, Limited, by this, its petition, respectfully shows:

1. That claimant at all times hereinafter mentioned was a corporation, organized and existing under the laws of the State of Iowa, engaged in the preparation, packing and sale of meat products, including hog products for foreign and domestic commerce, and having an office at 4100 South Ashland Avenue, in the City of Chicago, and State of Illinois.

2. That subsequent to November 5, 1933, and prior to January 6, 1936, claimant exported, in its own name, large quantities of hog products to foreign countries (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam). Processing taxes under Section 9 (a) of the Act of May 12, 1933, Ch. 25, 48 [fol. 90] Stat. 31 (7 U. S. C. A. Sec. 609), known as the Agricultural Adjustment Act, have been paid by claimant to the Collector of Internal Revenue at Chicago upon the processing of the hogs from which the aforesaid hog products were produced. A floor stock tax under Section 16 (a) of the said act has been paid by claimant to the Collector of Internal Revenue at Des Moines, Iowa, on that portion of the hog products so exported, which it held on November 5, 1933, the effective date of the processing tax on hogs.

3. That the taxes so paid by claimant are refundable to it, as the exporter or consignor named in the bill of lading under which said hog products were exported, pursuant to the provisions of Section 17 (a) of the said Agricultural Adjustment Act, as amended, which provides as follows:

"(a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands,

American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. * * *"

[fol. 91] 4. That upon exportation of said hog products and prior to June 22, 1936, claims for the refund of processing and floor stock taxes previously paid were duly filed by claimant with the Collector of Internal Revenue for the First District of Illinois, pursuant to and in compliance with regulations prescribed by the Commissioner of Internal Revenue. Attached hereto, marked Exhibit "A" and made a part of this petition, is a schedule which correctly shows under properly designated columns: (1) the number given by the Treasury Department to each claim filed by claimant for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog product; (6) the amount of tax paid, refund of which is sought by reason of such taxed hog product having been exported; (7) the month and year in which the product was processed; and (8) the date on which the tax was paid.

5. That each of the claims so filed by claimant (Exhibit "A", column 1) was rejected, in the amount shown in Exhibit "A", column 6, by the Commissioner of Internal Revenue.

6. That no action other than as aforesaid has been had on these claims in Congress or by any of the departments; that no person other than claimant is the owner thereof or interested therein; that no assignment or transfer of said claims

[fol. 92] or of any part thereof or interest therein has been made; that claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; that claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government; and that it believes the facts as hereinbefore stated to be true.

Wherefore, claimant prays judgment against the United States of America upon the facts and the law for $67,710.30 together with its reasonable costs and disbursements thereon.

T. M. Sinclair & Company, Limited, By Edward Foss Wilson, President. Louis R. Simpson, Attorney for Claimant. Post Office Address, 4100 South Ashland Avenue, Chicago, Illinois.

[fols. 93-94] *Duly sworn to by Edward Foss Wilson. Jurat omitted in printing.*

[fols. 95-100] ("Exhibit A", the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for the refund of taxes paid with respect to products exported. Said schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $67,710.30, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid.)

* * * * * * *

[fol. 101] IV. Proceedings in re General Traverse

On May 10, 1939, a General traverse was filed by the defendant.

On August 21, 1939, the defendant filed a motion for leave to withdraw the General traverse, and to file a motion to dismiss plaintiff's petitions for lack of jurisdiction.

On September 5, 1939, the court allowed defendants' motions for leave to withdraw the General traverse, and to file a motion to dismiss petitions for lack of jurisdiction.

[fol. 102] V. DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S PETITION FOR LACK OF JURISDICTION—Filed September 5, 1939

Comes now the defendant, by its Assistant Attorney General, and moves this Honorable Court to dismiss plaintiff's petition because—

(A) The Court is without jurisdiction to proceed with this case in respect to any amounts paid by plaintiff and sued for either as floor stocks or processing taxes, for the reason that plaintiff does not allege or claim in its petition—

(1) that it bore the burden of the amounts paid as tax and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, through inclusion of the amount in the price of the product, through reduction of the price paid for the raw material, or in any manner whatsoever, as required by Section 902 of the Revenue Act of 1936, and

[fol. 103] (2) that the claims sued upon were filed after the enactment of the Revenue Act of 1936, pursuant to regulations prescribed by the Commissioner of Internal Revenue thereunder, as required by Section 903 of said Act.

(B) The Court is also without jurisdiction to proceed with this case in respect to any amounts paid by plaintiff and sued for as processing taxes, under the provisions of Section 906 of the Revenue Act of 1936, which vests exclusive jurisdiction in the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia to judicially review the decision of the Commissioner of Internal Revenue and "the Board" in actions for the recovery of amounts paid or collected as processing taxes under the Agricultural Adjustment Act.

Samuel O. Clark, Jr., Assistant Attorney General.

[fol. 104] VI. Argument and Submission on Defendant's Motion to Dismiss Petitions for Lack of Jurisdiction

On November 6, 1939, the cases were argued and submitted together on defendant's motion to dismiss for lack of jurisdiction by Mr. Louis R. Simpson for plaintiffs, and by Mr. Guy Patten for defendant.

[fol. 105] VII. Opinion of the Court on Motions to Dismiss Petitions for Lack of Jurisdiction—Filed December 4, 1939

Mr. Louis R. Simpson for the plaintiffs.

Mr. Guy Patten, with whom was Mr. Assistant Attorney General Samuel O. Clark, Jr., for the defendant. Messrs. Robert N. Anderson and Fred K. Dyar were on the briefs.

Whitaker, Judge, delivered the opinion of the court:

These cases are pending on motions to dismiss for want of jurisdiction. The allegations of the petitions are in all essential respects the same. They allege that the plaintiffs exported certain hog products which had been processed by them, and on which they had paid the tax, which tax they sue to recover under section 17 (a) of the Agricultural Adjustment Act. This section provides for the refunding of taxes due and paid upon the exportation of any product upon which a processing tax had been paid.

[fol. 106] The defendant insists that this Court is without jurisdiction to grant the relief sought because: first, the petitions do not allege that the plaintiffs bore the burden of the tax and did not pass it on; and, second, because the petitions do not allege that the claims sued on were filed after the enactment of the Revenue Act of 1936; and, third, because exclusive jurisdiction is vested in the Circuit Courts of Appeal and the United States Court of Appeals for the District of Columbia to review decisions of the Commissioner of Internal Revenue and of the Board of Review in actions for the recovery of processing taxes, and that these are such actions.

The Government insists, specifically, that plaintiffs' remedy is under Title VII of the Revenue Act of 1936, and not under Title IV. If this position is correct, then this Court is without jurisdiction, because section 906 of Title VII provides for a review of the decision of the Commissioner

on claims for the refunding of processing taxes only by a Board of Review, and provides for a review of the decision of the Board only by the Circuit Courts of Appeal and by the United States Court of Appeals for the District of Columbia. It is also provided that claims for refund under this Title must have been filed after the passage of the Revenue Act of 1936, and the petitions in these cases show the claims were filed before that date.

We do not think, however, that plaintiffs' remedy lies under Title VII: first, because section 911 under Title VII expressly provides:

> The provisions of this title shall not apply to any refund authorized under the provisions of sections 15, 16 and 17[1] of the Agricultural Adjustment Act, as amended and reenacted, or with respect to any articles exported under the provisions of section 317 of the Tariff Act of 1930. * * *

Title VII is the title providing for refunds to processors of the processing taxes paid by them. Section 911 under this Title expressly exempts from its provisions processors who are entitled to a refund under section 17 of the Agricultural Adjustment Act on account of the exportation of the articles processed. Language could hardly be more explicit.

[fol. 107] The defendant says that the reports of the House and Senate Committees on the Revenue Act of 1936 show that relief was to be had by processors-exporters only under Title VII. It seems to us that the language of section 911 excluding processors-exporters from the terms of Title VII is too explicit to necessitate or to warrant resort to the Committee Reports. Standard Fashion Co. v. Magrane-Houston Co. 258 U. S. 346.

Secondly, we think it would be inconsistent with the purpose of section 17 (a) of the Agricultural Adjustment Act and of section 601 of the Revenue Act of 1936 to exclude processors-exporters from the benefits of those sections. The purpose of Congress in the enactment of these sections was to enable Americans to compete with the nationals of other countries in the world markets. If subject to this processing tax, they couldn't do this unless the nationals of other governments were subject to a similar tax. If they were, it permitted the American exporter to undersell

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[1] This section allows "drawbacks" on exportations.

them and thus dispose of our surplus farm products, which was something very much to be desired at the time of the passage of these Acts. This being the purpose of Congress, there would be no reason for differentiating between an exporter who was not liable for the processing tax and an exporter who was. The purpose was to enable exporters to sell American goods in the world markets as cheaply as possible. Congress, therefore, would have defeated its own purpose if it had required any exporter to pay the tax, whether that exporter was a processor or not.

This view is given support by the fact that section 17 (b) of the Agricultural Adjustment Act permits the processing of articles for exportation without the payment of any tax thereon, if a bond is given to insure the exportation of the article processed. If exported no tax is due and the bond is cancelled. This makes it all the more clear that Congress intended to relieve the processor from the processing tax as to all articles exported. If this be true, of course the processor-exporter is entitled to the refund provided for in section 17 (a) of the Agricultural Adjustment Act and in Title IV of the Revenue Act of 1936.

[fol. 108] But the defendant says that section 601 (b) expressly prohibits refunds to processors under section 17 (a), relying upon this language:

> Except for refunds under section 15 (a) of the Agricultural Adjustment Act, as reenacted herein, no refund under this section shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based.

If this sentence means what defendant contends, then a processor is entirely without a remedy, because, as we have seen, section 911 excludes him from the remedy of Title VII. It seems to us that the proper construction of this language, in order that the several sections of the Act might be harmonious, is that Congress therein was referring to processors, as distinguished from exporters, and not to processors who were both processors and exporters. The only purpose of the sentence was to make it plain that processors who are not exporters were not to have the benefit of that section, but were to be confined to the relief provided for processors as such.

This view is in harmony with the decision of the Circuit Court of Appeals for the 7th Circuit in Cudahy Bros. Co.

v. LaBudde, et al., 92 F. (2nd) 937. This decision was followed by the District Court for the 2nd Circuit in Neuss, Hesslein & Co., Inc. v. United States, Prentice-Hall Federal Tax Service (1939), Par. 5.286.

If we are correct, then, in saying that plaintiffs are entitled to relief under Title IV, it is not necessary that they show they bore and did not pass on the burden of the tax, nor that the claims for refund were filed after the passage of the Revenue Act of 1936. These provisions apply only to claims under Title VII.

Since the plaintiffs' claims are grounded on Title IV, Section 906 (providing for review of the Commissioner's action on the claim for refund) has no application, since it is confined to proceedings to recover processing taxes and since these are suits to recover drawbacks on exportations.

However, we do not think this court has jurisdiction of proceedings under Title IV by reason of the provisions of [fol. 109] section 601 (e) of Title IV of the Revenue Act of 1936, which provides:

> The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination.

The defendant does not defend on this ground, but since we are clearly of opinion that this deprives us of jurisdiction, the petitions must be dismissed on this ground.

The plaintiffs say their actions are not based on section 601 of the Revenue Act of 1936, but on section 17 (a) of the Agricultural Adjustment Act, which they say was not declared invalid by the Supreme Court in United States v. Butler, 297 U. S. 1, and that under this Act they were entitled to maintain suit. But Section 17 (a) of the Agricultural Adjustment Act, whether or not declared unconstitutional by the Butler case, was reenacted by section 601 of the Revenue Act of 1936, and thus became a part of that section, and subsection (e) thereof says that as to all claims for refund under that section the action of the Commissioner shall be final and that no court shall have jurisdiction to review it. Therefore, whether or not the plaintiffs may have had the right to maintain these suits under section 17 (a) before the passage of the Revenue Act of 1936, this right was taken away from them by section 601 (e) of the Revenue Act of 1936. This, of course, Congress had

the right to do. Whether or not it should have done so is not for us to decide. Section 601 of the Revenue Act of 1936 now constitutes the only remedy available to plaintiffs.

It results that plaintiffs' petitions must be dismissed. It is so ordered.

Williams, Judge; Littleton, Judge; Green, Judge; and Whaley, Chief Justice, concur.

[fol. 110] VIII. JUDGMENT

At a Court of Claims held in the City of Washington on the 4th day of December, A. D. 1939, judgment was ordered to be entered as follows:

It is Ordered that defendant's motions to dismiss petitions be allowed and petitions be dismissed.

IX. PROCEEDINGS AFTER JUDGMENT

On January 10, 1940, the plaintiffs filed a motion for leave to file amended petitions.

On February 5, 1940, the court overruled plaintiffs- motion for leave to file amended petitions.

X. SUBSTITUTION OF ATTORNEY OF RECORD

On February 8, 1940, plaintiffs filed a motion to substitute Paul E. Shorb as attorney of record (present attorney, Louis R. Simpson withdrawing).

On February 14, 1940, the court allowed the substitution of Paul E. Shorb as attorney of record without prejudice to former attorney.

[fol. 111] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 112] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1939

No. 778

STIPULATION WITH RESPECT TO THE OMISSION OF "EXHIBIT A" FROM THE PRINTED RECORD—Filed March 1, 1940

It is hereby stipulated between the petitioner, by its attorney, and the respondent, by its Solicitor General, that

in the printing of the record in the above-entitled cause the Clerk shall omit therefrom "Exhibit A" which is attached to the original petition of petitioner filed in the Court of Claims, and shall include in the place thereof the following statement:

" 'Exhibit A', the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for the refund of taxes paid with respect to products exported. Said schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $144,666.03, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid."

Dated this 13th day of February, 1940.

Paul E. Shorb, Attorney for Petitioner. Francis Biddle, Solicitor General of the United States.

[fol. 112½] [File endorsement omitted.]

[fol. 113] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1939

No. 779

STIPULATION WITH RESPECT TO THE OMISSION OF "EXHIBIT A" FROM THE PRINTED RECORD—Filed March 1, 1940

It is hereby stipulated between the petitioner, by its attorney, and the respondent, by its Solicitor General, that in the printing of the record in the above-entitled cause the Clerk shall omit therefrom "Exhibit A" which is attached to the original petition of petitioner filed in the Court of Claims, and shall include in the place thereof the following statement:

"'Exhibit A', the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for the refund of taxes paid with respect to products exported. Said Schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $6,641.00, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid."

Dated this 13th day of February, 1940.

Paul E. Shorb, Attorney for Petitioner. Francis Biddle, Solicitor General of the United States.

[fol. 113½] [File endorsement omitted.]

[fol. 114] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1939

No. 780

STIPULATION WITH RESPECT TO THE OMISSION OF "EXHIBIT A" FROM THE PRINTED RECORD—Filed March 1, 1940

It is hereby stipulated between the petitioner, by its attorney, and the respondent, by its Solicitor General, that in the printing of the record in the above-entitled cause the Clerk shall omit therefrom "Exhibit A" which is attached to the original petition of petitioner filed in the Court of Claims, and shall include in the place thereof the following statement:

"'Exhibit A', the printing of which is omitted by stipulation of the parties, is a schedule of claims filed pursuant to section 17 (a) of the Agricultural Adjustment Act for

the refund of taxes paid with respect to products exported. Said Schedule shows: (1) The number given by the Treasury Department to each claim filed by petitioner for the refund of processing and floor stock taxes upon exported hog products; (2) the serial number given by the Collector of Customs of the port of export to the application for inspection of each shipment exported; (3) the description of the product exported; (4) the tax paid weight or content of the product exported; (5) the rate of tax applicable to the particular class of hog products exported; (6) the amount of tax paid, aggregating $67,710.30, refund of which is sought by reason of such taxed hog products having been exported; (7) the month and year in which the exported product was processed; and (8) the date on which the tax was paid."

Dated this 13th day of February, 1940.

Paul E. Shorb, Attorney for Petitioner. Francis Biddle, Solicitor General of the United States.

[114½] [File endorsement omitted.]

Endorsed on cover: Enter Dean G. Acheson. File Nos. 44,185, 44,186, 44,187. Court of Claims. Term No. 778. Wilson and Co., Inc., Petitioner, vs. The United States. Term No. 779. Wilson & Co., Inc., of Kansas, Petitioner, vs. The United States. Term No. 780. T. M. Sinclair & Company, Limited, Petitioner, vs. The United States. Petition for writs of certiorari and exhibit thereto. Filed March 1, 1940. Term Nos. 778, O. T., 1939, 779, O. T., 1939, 780, O. T., 1939.

[fol. 115] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 23

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 116] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 24

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 117] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 25

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.